

# The Sun

WILLIAM M. LAFAN

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## Mr. Roosevelt's Two Experiments With Home Rule.

In an opinion written by Presiding Justice CHARLES E. PARKER, the Supreme Court's Third Appellate Division yesterday declared unconstitutional the Roosevelt Special Franchise Tax act of 1899.

This law was Mr. ROOSEVELT's own measure in a peculiar and exceptional sense. It was his first effort for the enforcement of his personal views of the proper relation of Government to the corporations. It was the first practical application of his personal studies of existing inequalities in the distribution of wealth. It was the initial manifestation of a belief on his part that destiny had reserved for him the task of curbing the larger business activities of the country. At the same time, the Special Franchise Tax law of 1899 was Mr. ROOSEVELT's first experiment in legislation of doubtful Constitutionality, deliberately undertaken by him and urged upon the Legislature in spite of an avowed suspicion on his part of its questionable character in the face of the supreme law of the State.

Mr. ROOSEVELT will be the last person to deny his full responsibility for the Franchise Tax law in the form in which it has now been declared unconstitutional. The test which has just been applied to this measure by the Third Appellate Division is the exact test which he suggested when, as Governor of New York, he brought the Legislature at Albany, in a special session called by him for that purpose, to pass the bill in the form which he recommended, and to leave the question of Constitutionality to the courts to decide afterward. This is the course which he understood to have urged upon the leaders of the Legislature in his personal conferences with them in May of 1899. This is certainly the course which he publicly recommended in his vigorous message of urgency, when he pleaded for the enactment of the bill notwithstanding the possibility of its overthrow by the courts. Governor ROOSEVELT then said:

"It is claimed that the particular method of assessment by the State Tax Commissioners may be improper or unjust, provision can be made for the same appeal to the courts that now lies in the case of any assessment on other kinds of property. Accordingly I recommend the enactment of a law which shall provide for the assessment of the tax by the Board of State Tax Commissioners."

The point of doubtful Constitutionality thus suggested by Governor ROOSEVELT as one that might well be left to the courts is the very point which has now impressed Justice PARKER and his concurring associates. The decision rendered yesterday says:

"The right to have all the property in its locality assessed by officers chosen by itself was secured to each town and municipality in the State by the Constitutional provision; and, in my judgment, the Legislature has no more power to infringe upon that right by withdrawing from its operation one particular species of property than it has to withdraw a dozen."

"And again, on the danger of invading in any particular or for any reason the rights of home rule secured to the localities by the Constitution:

"That instrument (the State Constitution) declares what the Legislature may not do. They may not transfer the functions of a local office to State officers. If an act of the Legislature attempts to do that, presumptively it is a dangerous invasion of the home rule principle, certainly it is a prohibited one. Concededly, it would not be authorized to so transfer, by other acts, many other special kinds of property. Concededly, the time would come when, to save the localities their home rule rights, the courts must hold an act unconstitutional that in itself attempts to do no more than this act does. In my judgment, both acts would be equally unauthorized."

So Mr. ROOSEVELT gets from the court the opinion which his special message invoked concerning the act he put through the Legislature by force of his earnestness, personal influence and confidence in his individual theories of Constitutional interpretation.

What will be the effect of this judicial rebuke upon President ROOSEVELT's disposition to urge the enactment by Congress of legislation of doubtful Constitutionality for the transfer to the Federal Government of powers and rights which the United States Constitution reserves to the States? No one, we think, can read Justice PARKER's carefully reasoned opinion without being struck by the essential similarity of the enterprise of centralization which Governor ROOSEVELT undertook at Albany four years ago and that in which he has lately been engaged as President.

Whatever effect this adverse decision may have upon Mr. ROOSEVELT's own self-confidence, we should say that the impression made upon the intellects of the legislators of the Senate and House must be considerable.

It seems as if Providence, or Fortune, or the Genius that watches over our American system to preserve the delicate balance between central power and local authority within State lines, was neglecting no opportunity to warn the Congress against the half-baked loaf and the half-cooked gun.

Mr. Jerome and the Gamblers.

For something like fifty days, Sundays included, the District Attorney of the county of New York has been gunning for gamblers. He has rushed foot- through the valley of the Tanderlin; he has found fairly good shooting on the plains of the Rialto and he has brought down big game on the heights of Murray Hill. The trail has been warm, and it has been fine sport for the hunter.

The District Attorney is not made for

that sort of thing. It should never have been necessary for Mr. JEROME to go after the game. The police should have delivered it to him, ready to cook. All the same it is proper to inquire as to the results of the hunt.

Stripped of all spectacular effects, like gamblers' confessions, which, in the last analysis, would have little or no weight in a court of law, this latest campaign of the District Attorney's has raised two important questions of law. One concerns the legal execution of a search warrant; the other the legality of the secret proceedings before a Justice of the Court of Special Sessions, by means of which Mr. JEROME is undertaking to get legal evidence against certain persons whom he charges, on information and belief, with keeping gambling houses.

The first question will remain unsettled until Police Inspector NICHOLAS BROOKS is acquitted or convicted of the charge of illegally entering the premises of one RICHARD A. CANFIELD. The propriety of the secret proceedings has been partly established. That is to say their legality has been twice questioned in the Supreme Court, by quite different methods, but in each case the District Attorney has secured judicial approval of his course.

The legality of these proceedings was challenged by young Mr. LEWISOR, and Mr. Justice SCOTT decided against him on nearly all the important points he raised. From that decision an appeal was taken and the case must be passed upon by the Appellate Division and, in all probability, by the Court of Appeals. The question, as raised by Mr. KESSLER, was passed upon last week by Mr. Justice LEVETT, and that very able jurist promptly dismissed the case, denying to Mr. KESSLER the alternative writ of prohibition, by which the latter sought to stop the Special Sessions Justice from holding further secret proceedings.

So it happens that the District Attorney has won on every issue that has grown out of his anti-gambling campaign thus far passed upon.

The end, however, is not yet, and, like the conservative men of science, who withhold praise or censure for a new scientific discovery until its value has been established, so the District Attorney must not be unduly commended or applauded for what he has achieved. The result seems to be that JEROME has found a new way to get gamblers. He gets them through the testimony of their patrons. The District Attorney suspects that somebody conducts a gambling house within the confines of the county. A secret inquiry is inaugurated and to it he summons any man who he thinks may have played against that game. Testimony thus given against a man is proof enough for the predication of an indictment. The star chamber develops the criminal, as the testimony given therein develops the crime.

There is no longer any use for the raid. The star chamber supplies better evidence and does not require the expenditure of so much vital force. The District Attorney need not leave his office to get the evidence he wants. The doors of every suspected house are as good as open to him. No wonder the soldiers of fortune are on the run.

New York as Viewed From Boston.

The Rev. Dr. SAVAGE spoke at the Unitarian Club of Boston last week in answer to the question "Why Unitarianism Does Not Sweep the Country?" His text being a remark by the venerable Rev. EDWARD EVERETT HALE at that club recently, to the effect that he could not understand why so simple and democratic a religion as Unitarianism had not swept the country long ago.

So far as concerns New York, more particularly, Dr. SAVAGE said that Unitarianism had rather been swept aside than swept ahead; that here the old theology still has tremendous sway and that eight-tenths of the people have no sympathy with Unitarianism and no sort of idea what it means, but inherit their religion and take it on tradition. They are afraid to change their religious beliefs, explained Dr. SAVAGE, to question them, or to think about them in any critical spirit, but treat conformity as a sort of obligation of good breeding.

There is an element of truth in this. "No gentleman," said JOHN VAN BUREN, "ever changes his religion or his politics," and undoubtedly there is very much of that spirit in New York at the present time. Religious and political partisanship is largely an inheritance. But it is not true, as Dr. SAVAGE said at Boston, that there is no thought on the subject of religion in New York, or that thought on it is narrowly limited. Open rebellion may be limited here, but the yeast of religious inquiry which is working throughout civilization is working in New York as actively as elsewhere. Men here are slow to change their religion, at least, to exchange religious belief for avowed and aggressive infidelity. In our society of fashion and among men of the world generally, Dr. SAVAGE said, not untruly, "if husbands have any religion they have it, as some people do, unquestionably, in their wife's name," and, unquestionably, they put it into a safe place when they leave it to the custodianship of feminine religious sentiment. But the recent census of church attendance in New York and in London demonstrated that proportionately to the whole it consists of men much more largely here than in the English capital. In some of our churches there are as many men as women at the Sunday services.

Is this church attendance, in great part, merely a concession to convention? Who shall analyze the motives of the people making up the congregations? They themselves may be unable to analyze them; to separate genuine religious faith and devotion from the other and outside motives influencing them. At any rate, relatively more men seem to go to church on Sunday in New York than in perhaps any other of the great cities of Christendom, certainly, many more than in London. They do not go to Unitarian churches in any large numbers either relatively or actually, not so many, proportionately, as did a generation ago, when Dr. BELLOWS was one of the great and popular preachers of the

town. Why is this? Is it not because the Unitarian type of mind has passed, usually, far beyond Unitarianism as an institution and landed in the agnosticism which has no use for any sort of church? Unitarianism itself has slipped the moorings of the Unitarianism of to-day, his was only a slight variation from strict orthodoxy. For instance, he revered the authority of the Bible to an extent not reached by even many of our orthodox theologians and clergy of this time. He would have shuddered at Dr. SAVAGE's scientific criticism of the Bible, and even at that now fashionable in so many nominally orthodox theological schools.

The religious infidelity of this time, and perhaps in New York, more particularly, is not aggressive, does not seek to propagate itself. It respects rather than derides churches and religious faith, and even, oftentimes, preserves at least an appearance of outward conformity. Perhaps, in the end, it may be all the more dangerous on that account. We observe that the spirit of bitter controversy is exhibited rather in the letters sent to us from stanch believers than in those from serious questioners. The latter usually express unsatisfied religious yearnings rather than the violence of enmity to institutional religion which distinguished the old-time infidelity. The contemporary scepticism is usually courteous and not merely tolerant of belief, but also indisposed to shatter it in the minds of which it is a happy possession.

New York, Dr. SAVAGE should remember, and Bostonians should know, is a very great and a cosmopolitan community, with every phase and form of religious belief represented in it and every variety of religious and sceptical thought. But here people who want religion or who desire to manifest practical conformity to it by going to a church are not likely to seek a church where ethical culture, or, at least, a mere religious philosophy, is purveyed as a substitute for religion. They want the real thing, or nothing.

A Septennial Parliament of Man. A year or two ago trust conferences were the favorite form of entertainment in "sociological circles." Select thinkers summoned other select thinkers to meet at St. Louis, Chicago or other favorite capitals and ponder trusts. The trust conference seems to have disappeared or to have been transferred to Washington and the White House. A more majestic assemblage, an ecumenical council, of sages is now proposed. Naturally, the proposal comes forth in Massachusetts and is submitted to the General Court of that State, a body which is practically in permanent session. Last week the Hon. ROBERT TRACY, President, and the Hon. BENJAMIN FRANKLIN TRUEBLOOD, secretary, of the American Peace Society, presented to the House of Representatives a petition asking the General Court to ask Congress to ask the President to ask the Governments of the world to join in establishing an international congress. This congress is to meet every seven years "for deliberation and recommendation on matters of general international concern." It seems that the General Court as far back as 1837 and 1838 passed resolutions in favor of a world congress. Presumably these resolutions were not communicated to foreign Governments or the world congress might have begun to sit fifty or sixty years ago.

The petitioners recite that:

"The nations are to day united as never before in commercial, economic, social and philanthropic relations, and their mutual interests are constantly and rapidly increasing."

Constant, rapid and intimate communication between nations has not been accompanied with any diminution, but rather with a strong increase, of national patriotism and chauvinism. Every year the commercial and economic rivalries between nations become fiercer. Commercial and economic war may be said to be the normal relation between the great Powers of the world. People travel more, learn more foreign languages, in self-defense have to know more about other countries than was formerly the custom. There is a more eager hunt for markets, a stronger necessity of disposing of superfluous products. Really there is a sharper division between nations and not a closer union of them. A wise nation knows neither friendships nor hatreds. It follows undeviatingly the line of self-interest. Temporary international friendship may be, but they amount to nothing. What, for example, do the recent efforts of the German Emperor to convince the Americans of his friendship for them come to? The visit of Prince HENRY, the rather embarrassing gift of a statue of FREEDRICK called the Great, the Germanic Museum at Harvard, have an amiable part in the "scientific, social and philanthropic relations" mentioned by the Massachusetts petitioners, but are absolutely of no practical importance. These things are merely sentimental incidents. The United States and Germany will not cease to pursue to the utmost their own advantage and to take advantage of each other if they can.

A world's congress would give a number of distinguished persons or figureheads an opportunity to exhibit themselves and more or less bad French, and to read papers or make speeches. To believe that it would "exert a great and growing influence in favor of amity and mutual good will, would lessen the danger of war and assure the permanence of peace and the continuance of prosperous commercial relations," as Mr. PAINE and Mr. TRUEBLOOD recite, is to build upon the clouds. So, not long before the outbreak of the Crimean War, the Crystal Palace Exhibition at London was to be the harbinger of peace among the nations. There are men living who had a poetic belief that the Crystal Palace was a sort of New Jerusalem.

A certain amount of small friction and jealousies is likely to be disengaged by international congresses. Otherwise they are as harmless, and just about as important, as those "public forums" which seek to relieve the sometimes suppressed but essentially inexpressible Bostonian thirst for spouting.

Beantalk Jack in Chicago. Mrs. W. D. MCCLINTOCK, of the department of English in the University of Chicago, says "Jack and the Beantalk" is immortal! It seems strange that nobody, except Mrs. MCCLINTOCK, ever thought of that. The man who remembers "Jack and the Beantalk," and recalls the efforts he made to hold fast to the top of a haystack while reading it, will resent this assertion of the learned lady of the department of English?

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Did JACK steal the money bags? No; he merely removed them beyond the reach of the wicked giant to whom they were of no use, because that giant got his board and lodging free and never paid a red cent for the rent of his castle in the sky. No other charge against JACK can be supported even by a beantalk. JACK stands at the threshold of the castle of English literature, and the man who fails to get his permit to climb the winding stairs, just as he climbed the beantalk, will never see the wondrous things within the grand old walls. When Lake Michigan dwindles away until it becomes a duck pond, when the site of the city of Chicago passes from the reach of history, and when the feathers of Mrs. MCCLINTOCK's future wings fall out to join the snowflakes, boys will read the story of "Jack and the Beantalk" and bless the name of the author, if they can ever find it out.

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Political meteorologists are studying the descriptions of that "bright and perfectly formed" rainbow which was seen "at the zenith" in Norwalk, Ohio, at 9 A. M., sharp, Monday. It lasted for half an hour and was gazed upon with wonder by the people. The sun was shining brightly. Not a cloud was in sight. At Akron and divers other cities the same rainbow was seen or seemed to be seen. In Cuyahoga county a bright and perfectly formed red devil wagon was seen in the zenith at 9:15 A. M. The Tom Johnson boom is getting phosphorescent.

The new German instrument, the aesthetometer for recording mental fatigue, may be useful in ways not thought of by its inventors. Few persons have any brains to fatigue; and few of those few are industrious enough to work their brains to the point of weariness. But by means of aesthetometers, speakers, orators and lecturers can "get a gauge on themselves" and know their effect upon their audience. Is a minister "candidising"? Is a professor looking for a job? Is a Representative in Congress addressing his constituents? Give every bearer a copy of the aesthetometer, and judge by the average of the records the value or want of value of the speaker and his proper percentage of weariness-making. In time, perhaps, public speakers can be classified as golf players are. We know some after-dinner droners, some of the portly, who perform, who would be astounded if the weariness they cause could be set forth in millimeters.

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## THE RIGHTS OF THE STATES.

Our Dual System of Government and the Struggle to Preserve It.

TO THE EDITOR OF THE SUN.—Sir: Every one should wish that you have not been mistaken in thinking that Attorney-General Knox has begun to see that, in the interstate commerce business, he has gone too far in the direction of a consolidated central oligarchy at Washington and is willing to retract his steps. "Had recesses gradum?" Eminent lawyers, of whom he is one, should be the powerful conservative strength of a dual system of government reposing, like ours, on a written Constitution, which is neither a code nor a statute, but an expression of a few fundamental principles, and then an enumeration of powers and a limitation of powers.

Ex-Senator Edmunds has recently sounded a note of warning advice. He declared that Congress has gone far enough in the law he had a hand in framing. What is needed, and all that is needed, he tells Congress, and his countrymen, is that the President shall use faithfully, efficiently and with skillful attorneyship, the power already placed in his hands.

"If a State can authorize a monopoly of production within its borders, because it has the power over production as such, although it indirectly affects interstate commerce, may not the United States regulate interstate commerce, over which it has exclusive control, even though it indirectly affects production over which, as such, it has no control?"

That question, asked by Mr. Knox at Pittsburg, has gone over the land, bedeviling the uninformed. The President naturally took it in as law and gospel, because it came from his capable Attorney-General. Its interrogative form did not arrest attention and blunt the keen edge which it so deep into the Constitutional truth, declared by Chief Justice Marshall in the Gibbons case, in 1824, and since upheld by a line of Supreme Court opinions, that regulation of "the internal commerce of a State" had not been "surrendered to a general government."

Debate over the question whether or not New York can "authorize a monopoly of production within its borders" would now be academic because nobody is proposing it, and the Attorney-General will concede the power, which, if Congress cannot directly assert, it cannot indirectly assert.

Both the States and Congress have heretofore endeavored, by subtle machinations, to break down the interstate commerce clause of the Constitution. One State after another has tried to make other States, and their citizens or corporations, pay a part of its taxes, but the Supreme Court has prevented. Congress has legislated to impair the police power of a State at the point of least resistance, but the Supreme Court has interposed to stop the beginnings.

Some have counted over 150 decisions by the court, interpreting, defining and applying the interstate commerce clause. The struggle, long and earnest by the "temperance" advocates, over the right of each State to regulate, and even prohibit, the liquor traffic, has very recently been closed by a victory for State sovereignty. Interstate commerce in liquor has not been stopped, but it has been proclaimed that Congress shall not use its power so as to prevent liquor when it comes from inside a State, even in the package of importation, from subjection to State law.

The Supreme Court has adjudged that neither Congress, nor the court, can interfere with any State legislation against those wishing to make and sell wholesome oleomargarine as an article of food.

Till the recent Knox-Roosevelt campaign, and even since the Fourteenth Amendment, the judicial rule has been that, over what is entirely local, each State is supreme, unless it violates the right to life, liberty or property, without "due process of law"; and, conversely, Congress is supreme over all that is national, if it does not offend against the Fifth Amendment.

The nation is not permitted to keep open the channels of interstate trade by laws unnecessary and improper to execute the commerce clause of the Constitution (the necessary and proper clause of the Constitution), nor to judge by laws prohibited by any other clauses of the Constitution, such as the Fourth and Fifth amendments.

Right there was the vice and injury of the subtle question put by Attorney-General Knox in his Pittsburg speech. Congress may close the channels of interstate commerce in aid of the Constitutional rights and duties of each State, but he should not urge, or allow, Congress to do what is entirely local, each State is supreme, unless it violates the right to life, liberty or property, without "due process of law"; and, conversely, Congress is supreme over all that is national, if it does not offend against the Fifth Amendment.

You do well to invoke the recent brief, filed by the Attorney-General's office in the lottery case, as evidence of the scope of the Knox-Roosevelt plan for exterminating present prosperity. It went far beyond the needs of that case, which presents only the questions whether or not a lottery ticket is an article of interstate commerce, and whether Congress can enact that carrying a lottery ticket from one State to another shall be punished as a crime. The court seems to have decided that an insurance policy is not an object of interstate commerce, because only a contract.

The Attorney-General's office does not urge on the Supreme Court new propositions of Constitutional law unless they have been approved by the Executive branch which the Attorney-General represents. The universally accepted rule is that the United States can only make and punish offenses against the power which it can lawfully exercise, but the Attorney-General's lottery brief asks the court to sanction a general Federal police power to keep open the channels of interstate trade, by removing obstacles which Congress may fancy have come of things done in a State, and lawfully sanctioned by a State, as, for example by corporations created by a State, and then confining their operations within the limits of the State creating them.

The basis of the new Federal police power is "the great aims" for which the Government of the United States was established. That is to be seen in the sentences of the lottery brief, like the following, endeavor to allay suspicion and alarm:

It may well be that where a prohibition is not removable to some of the police powers of a sovereign State, or to the great aims for which all government is founded, and where, therefore, such prohibition is an undue trespass upon the liberties of the citizens, that the judicial department of the Government would have the power to declare such a law void. The bill or laws contained in the amendments to the Constitution will prohibit many arbitrary and unwarranted prohibitions of trade between the States. Any prohibition that would lead to a preference to any port, or that would destroy the immunity and privileges of citizenship, would present a very different question from that involved in the cases at bar.

NEW YORK, Jan. 20. STATE RIGHTS.

A Long-Shot Prephet.

TO THE EDITOR OF THE SUN.—Sir: Please allow me to say to the world through your prominent paper that there will be a judgment in 1922, between the last of October and the first of November, of which the world will confront a great reversal, especially the United States.

Minister of the Baptist Church.

FOUR WOMEN, Tex., Jan. 18.

## PAINTINGS AND STATUES BY FREDERICK MACMONNIE.

At the Durand-Ruel Galleries an exhibition has been arranged by Theodore B. Starr, consisting of paintings and bronze statues by Frederick Macmonnie. The occasion is interesting, since it gives the public an opportunity of seeing this clever sculptor in the recently adopted role of painter.

It is late in the day to estimate the qualities of Mr. Macmonnie's work as a sculptor. His statues exhibited here recall them and they have some relation to his work in color. As a sculptor, then, he was a technician of extraordinary ability, with the eye that touches and the thumb that sees, modelling with a fullness and exactness of truth and reaching a refinement of expression in the contours and surfaces that is scarcely surpassed by any living artist. He was equally a master of construction, a facile and accomplished draughtsman, with a real sense of what is clear and decorative in composition. But the composition in which he excelled was that of a single figure; such a one, for example, as the "Diana" in this exhibition, which is the perfection of free and graceful movement, lovely from every point of view. It is in a subject such as this, or in the "Boy and Duck," "The Running Cupid" or the boy "Pan of Robalton," that this sculptor, with much of the "Man" and "Woman" in himself, excels. No one may hazard, in himself, excels. No one may hazard, in himself, excels.

It is when he is confronted with a larger problem, involving the dignity of character, that his comprehension lags behind his manipulative skill. His "Shakespeare" at the Congressional Library, represented here in statuette size, is mainly a triumph of statuary sculpture, while the "Sir Harry Vane" at Boston is little more than an elegant gentleman drawing on his glove. Still, the latter, with the head of the cloak thrown across his shoulder and his trailing feather, has a decorative charm as free as it is sumptuous; while the Shakespeare may interest at close range, but cuts very humbly against the decorative background to figure that his cunning fails him. His fountain at Chicago was a congeries of details, not all of them successful. In this exhibition one of two figures, the "Venus and Adonis" how jejunous a clever artist may be. And in this there is another example of the studio model, represented by quite rank naturalism. This was the last chapter in Mr. Macmonnie's practice as a sculptor. The groups for the Brooklyn arch exhibit are not only compositions in lieu of composition, but an entire suspension of his imaginative faculty. The figures are the blindest possible reproduction of the model, and the model is in the case of Columbia the artist would appear to have searched for one that should embody the physical qualities in their growth as a woman, and an artist that he turns to the more sensuous possibilities of color; and some of the figures suggest a vulgar and a vulgar. Not a little suggestive is the fact that his "Venus and Adonis" is a vulgar and a vulgar. Not a little suggestive is the fact that his "Venus and Adonis" is a vulgar and a vulgar.